SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***Brittingham v. Davis***
C.A. No. S08C-07-013 RFS

Upon Plaintiff's Motion for New Trial. Denied.

Submitted: April 8, 2010
Decided: April 14, 2010

Dear Counsel:

I have before me Plaintiff Stacie Brittingham's Motion for a New Trial in regard to the above-referenced case. At trial, the jury returned a verdict of negligence on the part of both parties, assigning 55 percent fault to Plaintiff and 45 percent fault to Defendant. Plaintiff now argues that there was no evidence upon which a jury could rationally have found that she was negligent to any degree; that no reasonable jury could have found that her negligence exceeded Defendant's; and that the verdict was inconsistent.

On a motion for a new trial, this Court will set aside a jury's verdict only where the

evidence weighs so heavily against it that a reasonable jury could not have returned the result.[1] The verdict must be upheld unless it is against the great weight of the evidence.[2] Issues of negligence are typically fact-intensive determinations that lie within the province of the jury.[3]

If Plaintiff means to suggest that the jury was biased or otherwise unreasonable, she has not introduced any evidence to support such a position, and the Court rejects this notion altogether. Plaintiff's argument that there was no evidence upon which to find any negligence on her part is also unavailing. Plaintiff made the same argument at trial, and I denied her motion for a directed verdict at that time. Without anything new, I deny the motion for a new trial based on the argument that there was no evidence on which a jury could find negligence on Plaintiff's part.

The accident occurred in an unobstructed intersection where traffic is controlled by two stop signs. The evidence showed that the collision took place to the rear broadside of Plaintiff's SUV, pushing both vehicles through the intersection, spinning Defendant's vehicle and causing Plaintiff's air bag to deploy. The jury is the ultimate decider of the parties' credibility. Plaintiff was tentative and did not know or remember important details. She admitted broadsiding the rear of Defendant's truck. Defendant's testimony

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[1] *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

[2] *Id.*

[3] *Duphily v. Delaware Electric Electric Co-op, Inc.*, 662 A.2d 831 (Del. 1995).

was unflinching, and he believed the right of way belonged to him under the circumstances.[4] While a ticket was given, he explained it was paid only for convenience and not out of a feeling of responsibility. The jury was free to accept the defense evidence as more credible and to reject Plaintiff's description of the event.[5]

Further, I agree with counsel's observation that "The Plaintiff was never able to answer adequately why, if she came to a complete stop and traveled only 30 feet, she was unable to get her vehicle stopped before crashing into the rear broadside of the Defendant's truck."[6] The jury could find that Plaintiff did not keep proper lookout, control or attention while running into Defendant's red-colored Cherokee Jeep. The intersection was unusually designed with traffic flowing from Route 9 onto the east and west bound lanes of Plantation and Beaver Dam Roads. The design itself called for cautious driving, as did the potentially hazardous conditions on the afternoon of November 10, 2006. As Plaintiff had a better vantage point, Plaintiff could be found responsible for not seeing and guarding against obvious dangers and could also be found

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[4]*Thompson v. Perkins,* 911 S.W.2d 582 (Ark. 1995)(holding that lay person, in this case, motorist, may give opinion as to right of way if the opinion is one which a normal person would form on the basis of the observed facts and if the opinion is helpful to a clear understanding of the testimony or a fact in issue).

[5]*Jenkins v. State*, 2008 WL 4659805 (Del.)(citing *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982)(jury is free to accept portions of witness's testimony despite contrary testimony from another witness).

In this case, the jury was instructed to attempt to reconcile contradictory testimony and, if it was unable to do so, to accept the more believable testimony and disregard the testimony that was not believable.

[6]Defendant's Response at ¶ 5.

to be 55 percent negligent. The jury was instructed to draw reasonable and common sense conclusions from the evidence, and I find that the jurors did just that. Thus, Plaintiff's first two arguments have no merit.

Concerning the alleged inconsistency of the verdict, as Defendant points out, this accident could have occurred in several different ways, each of which would result in the apportionment of negligence in different amounts. The jury concluded that Plaintiff was 55 percent negligent, and, other than conclusory assertions as to what she believes the verdict should have been, Plaintiff has not shown that the jury's determination was inconsistent with the evidence.[7]

For all these reasons, Plaintiff's Motion for a New Trial is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary

[7]*See Trievel v. Sabo*, 714 A.2d 742, 745 (Del. 1998)(observing that the determination of the respective degrees of negligence attributable to the parties presents a question of fact for the jury); *Norton v. Food Lion, Inc.*, 2009 WL 1580261 (Del. Super.)(noting that negligence claims are grist for the jury mill); *Harris v. Quickform Concrete Co., LLC*, 2007 WL 701131 (Del. Super.)(negligence is typically determined by a jury provided material facts are in dispute).